

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1837

AN ACT to amend the Indiana Code concerning courts and consumer protection.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-5-0.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. **However, the term includes a transfer of structured settlement payment rights under IC 34-50-2.**

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means:

(A) a seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including a manufacturer, wholesaler, or retailer, whether or not he deals

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directly with the consumer; or

(B) a person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

(4) "Subject of a consumer transaction" means the personal property, real property services, or intangibles furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer transaction to which the act relates to conform to the reasonable expectations of the consumer generated by such deceptive act and to perform such offer if accepted by the consumer; or

(B) to offer in writing to rescind such consumer transaction and to perform such offer if accepted by the consumer.

(6) "Uncured deceptive act" means a deceptive act:

(A) with respect to which a consumer who has been damaged by such act has given notice to the supplier under section 5(a) of this chapter; and

(B) either:

(i) no offer to cure has been made to such consumer within thirty (30) days after such notice; or

(ii) the act has not been cured as to such consumer within a reasonable time after his acceptance of the offer to cure.

(7) "Incurable deceptive act" means a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead. **The term includes a failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee as provided under IC 34-50-2 in connection with a direct or indirect transfer of structured settlement payment rights.**

(8) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration exceeding one hundred dollars (\$100) for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(9) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other

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persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(10) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or 900- exchange numbers listed in a local telephone directory.

SECTION 2. IC 34-6-2-71.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 71.3. "Interested party", for purposes of IC 34-50-2, has the meaning set forth in IC 34-50-2-1.**

SECTION 3. IC 34-6-2-142.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.3. "Structured settlement", for purposes of IC 34-50-2, has the meaning set forth in IC 34-50-2-2.**

SECTION 4. IC 34-6-2-143.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 143.5. "Transfer", for purposes of IC 34-50-2, has the meaning set forth in IC 34-50-2-3.**

SECTION 5. IC 34-6-2-143.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 143.7. "Transferee", for purposes of IC 34-50-2, has the meaning set forth in IC 34-50-2-4.**

SECTION 6. IC 34-50-2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2001]:

Chapter 2. Annuity Structured Settlements

Sec. 1. As used in this chapter, "interested party" refers to:

- (1) the payee;**
- (2) the annuity issuer;**
- (3) the structured settlement agreement obligor;**
- (4) the payee's counsel who assisted in the establishment of the structured settlement;**
- (5) a dependent of the payee; or**
- (6) a family member or relative who is acting as a caregiver for the payee.**

Sec. 2. As used in this chapter, "structured settlement" means periodic payments of damages established by a settlement or a court judgment in resolution of a tort claim for personal injury.

Sec. 3. As used in this chapter, "transfer" means a:

- (1) sale;**
- (2) assignment;**
- (3) pledge;**
- (4) hypothecation; or**
- (5) any other form of alienation or encumbrance;**

of structured settlement payment rights made by a payee for consideration.

Sec. 4. As used in this chapter, "transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer agreement.

Sec. 5. A direct or indirect transfer of structured settlement payment rights is not effective, and a structured settlement obligor or annuity issuer is not required to make a payment directly or indirectly to a transferee, unless an Indiana court of competent jurisdiction has approved the transfer in a final order in accordance with sections 7 and 8 of this chapter.

Sec. 6. Not less than ten (10) days before the date on which a payee becomes obligated under a transfer agreement, the transferee shall provide to the payee and other interested parties a disclosure statement, in boldface type of not less than fourteen (14) points in size, that includes the following:

- (1) The amounts and due dates of the structured settlement payments to be transferred under the transfer agreement.**
- (2) The aggregate amount of the payments disclosed under subdivision (1).**
- (3) An estimate of the present fair market value of the future periodic payments under the structured settlement**



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agreement.

(4) The gross amount payable to the payee as consideration for the transfer of the structured settlement payments disclosed under subdivision (1).

(5) An itemized list of all:

- (A) commissions;
- (B) fees;
- (C) costs;
- (D) expenses; and
- (E) charges;

payable by the payee or deductible from the gross amount payable to the payee, as disclosed under subdivision (4).

(6) The net amount payable to the payee after any deduction is made from the gross amount payable to the payee, as described in subdivision (5).

(7) The quotient, expressed as a percentage, obtained by dividing the net amount payable to the payee, as disclosed under subdivision (6), by the estimate of the present fair market value of the future periodic payments, as disclosed under subdivision (3).

(8) The amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee.

Sec. 7. An Indiana court of competent jurisdiction may approve a transfer of structured settlement payment rights only in a final order that is based on the express findings of the court. The express findings must include all of the following:

- (1) The consideration that the payee will receive for the transfer reasonably reflects the present fair market value of the future periodic payments under the structured settlement agreement.
- (2) The transfer is in the best interest of the payee.
- (3) The transfer will not materially impair the payee's ability to discharge the payee's obligations to the payee's dependents.
- (4) If the transferee is the applicant, the transferee has provided to the payee a disclosure statement in accordance with section 6 of this chapter.

Sec. 8. (a) An application under this chapter for approval of a transfer of structured settlement payment rights must be filed in:

- (1) the Indiana court in which the underlying tort action was pending; or

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(2) the court of general jurisdiction in the Indiana county in which the payee resides.

(b) The following apply to an application filed under subsection

(a):

(1) Upon filing of the application, the court shall set a date and time for a hearing on the application not earlier than twenty (20) days after the application is filed and shall notify the applicant of the date, time, and place of the hearing. The court shall give precedence to a hearing set under this section in accordance with Indiana Trial Rule 40.

(2) The applicant shall file with the court and shall serve on:

- (A) all interested parties;
- (B) the annuity issuer; and
- (C) the structured settlement obligor;

in the manner prescribed in the rules of civil procedure for the service of process, a notice of the proposed transfer.

(3) The notice required under subdivision (2) shall include:

- (A) a copy of the application;
- (B) a copy of the proposed transfer agreement, including the transferee's:
 - (i) name;
 - (ii) address; and
 - (iii) taxpayer identification number;
- (C) a copy of the disclosure statement provided by the transferee under section 6 of this chapter whenever the application is filed by a person other than the payee;
- (D) notification of the date, time, and place of the hearing on the application; and
- (E) notification that an interested party may support, oppose, or otherwise respond to the application, either in person or by counsel, by:
 - (i) submitting to the court a written response containing the interested party's support of, opposition to, or comments on the application; or
 - (ii) participating in the hearing.

(4) At the conclusion of the hearing on an application filed under subsection (a), the court may enter an order:

- (A) granting approval with or without modification; or
- (B) denying approval;

of the transfer. If the court grants approval of the transfer, the court shall include in the order all of the express findings required under section 7 of this chapter. If the court denies

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the approval of the transfer, the court shall include in the order the reasons for the denial.

(5) An order of the court made under subdivision (4) is a final and appealable order.

Sec. 9. (a) A payee who proposes to make a transfer of structured settlement payment rights does not:

- (1) incur a penalty;
- (2) forfeit an application fee or other payment; or
- (3) otherwise incur a liability to the proposed transferee;

if the transfer is not approved by a court under section 7 of this chapter.

(b) A provision of this chapter may not be waived.

(c) This chapter does not:

- (1) authorize a transfer of structured settlement payment rights in contravention of applicable law; or
- (2) give effect to a transfer of structured settlement payment rights that is void under applicable law.

Sec. 10. After a transfer that has been approved in accordance with this chapter, a structured settlement obligor and an annuity issuer are immune from liability to a payee, or to a party other than a transferee who is claiming through the payee, for paying structured settlement payments to a transferee.

Sec. 11. Failure of a transferee of structured settlement payment rights to timely provide a true and complete disclosure statement to a payee under this chapter in connection with a direct or indirect transfer of structured settlement payment rights is an incurable deceptive act under IC 24-5-0.5.

SECTION 7. IC 34-30-2-116.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 116.8. IC 34-50-2-10 (Concerning transfers of structured settlement payment rights).**

SECTION 8. [EFFECTIVE JULY 1, 2001] (a) IC 34-50-2, as added by this act, applies to transfers of structured settlement payment rights under a transfer agreement that is entered into after June 30, 2001.

(b) This SECTION expires June 30, 2006.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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